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No. _____

(Docket No. 417.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

THOMAS A. BALDWIN, THOMAS A. BALDWIN, EXECUTOR OF THE WILL OF CARRIE POOL BALDWIN, AND HARRY CARSTARPHEN, ADMINISTRATOR OF THE ESTATE OF CARRIE POOL BALDWIN WITH WILL ANNEXED, APPELLANTS,

VS.

STATE OF MISSOURI, APPELLEE.

JURISDICTIONAL STATEMENT.

JOHN F. GARNER,
Counsel for Appellants.

HARRY CARSTARPHEN,
Of Counsel.

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JURISDICTIONAL STATEMENT.

MAY IT PLEASE THE COURT:

Appellants respectfully show to this Honorable Court the basis on which it is contended this Court has jurisdiction to review on appeal the judgment herein of the Supreme Court of the State of Missouri:

I.

Statutory Provisions Sustaining Jurisdiction.

The case of *State of Missouri* v. *Baldwin's Estate*, decided by the highest court of the state in which a decision could be had, viz: the Supreme Court of the State of Missouri, on June 29th, 1929, and rehearing denied August 2nd, 1929, and being case number 28,-664, found in 19 S. W. (2) pages 732 to 740, (not yet printed in the official reports of the State of Missouri), (R. 43), draws in question the validity of a statute of the State of Missouri on the ground of its being repugnant to the Fourteenth Amendment to the Constitution of the United States, to-wit:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

and Section 2 of Article 4 of the Constitution of the United States, to-wit:

> "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

Title 28, United States Code Annotated, Section 344, (Judicial Code Section 237 amended), makes reviewable in the Supreme Court of the United States by writ of error a decision of the highest court of a state sustaining the validity of a statute of that state against attack on the ground of the said statute vio-

lating the limitations imposed by the Constitution of the United States, and under said section 344 of Title 28, United States Code Annotated, the Supreme Court of the United States may reverse, modify or affirm the decree, and in its discretion remand the case to the Supreme Court of the State of Missouri.

This section of the statute (344 of Title 28, U. S. C. A.) is construed in *Philadelphia & Reading Coal & Iron Co.* v. *Gilbert*, 245 U. S. 162, and it is there held that where a state statute is attacked for its invalidity as contrary to the limitations imposed by the Constitution of the United States, and the highest court of the state sustains the validity of the statute, writ of error is the proper procedure.

Writ of error however is abolished by Act of January 31st, 1928, and Act of April 26th, 1928. Title 28 United States Code Annotated, Section 861a and 861b.

The state statute in question (R51) imposes inheritance, transfer or succession tax. Said section is in part as follows:

> "When a transfer is by will, or intestate law of property within the state or within the jurisdiction of the state and the decedent was a non-resident of the state at the time of his death."

Under this statute the Supreme Court of the State of Missouri has decided that intangible personal property, such as debts due a non-resident decedent, are, regardless of all other questions, taxable in Missouri where evidences of the debt may be found in Missouri. The

cases cited in the concurring opinion of the Supreme Court of Missouri (R. 57) are the cases relied on by these appellants to sustain their position in this appeal.

II.

The case of *State of Missouri* v. *Baldwin's Estate* was decided by the highest court of the State of Missouri and judgment rendered, which is the judgment here sought to be reviewed, on June 29th, 1929 (R. 47).

Motion for rehearing was denied on August 2nd, 1929 (R. 75).

The application for appeal was presented to the Chief Justice of the highest court of the State of Missouri, to-wit: the Supreme Court of the State of Missouri, being the court wherein the decision was rendered, on September 21st, 1929, and that day allowed (R. 79.).

This appeal was lodged with the Supreme Court of the United States on September 24th, 1929 (R. ...).

III.

Carrie Pool Baldwin died testate in Quincy, Illinois, a resident of Illinois. Her will was probated in the State of Illinois and inheritance tax imposed upon the land in Illinois and *all* of her intangible personal property. Ancillary letters of administration with will annexed were issued in Missouri on account of certain land located in Missouri. The estate consisted of land in the states of Illinois and Missouri, which passed by the will, and intangible personal property due decedent in the form of bank accounts, government bonds

and promissory notes both secured and unsecured due from both residents of Missouri and non-residents of Missouri. Under certain statutes of Missouri, designed to find taxable property, evidences of debt due the non-resident decedent were discovered in Missouri and reported in course to the State Treasurer. This was all subsequent to the date of her death. The inheritance tax appraiser appraised the debts due the non-resident decedent in the form of bank accounts, government bonds and notes, evidences whereof were found in Missouri. To this report exceptions were filed wherein attack was made (R. 7.) on assessment of such intangible personal property of a non-resident decedent for inheritance tax in violation of the Fourteenth Amendment of the Constitution of the United States. It was conceded at all times that inheritance tax on the land in Missouri was a proper tax for the State of Missouri to impose. An instrument was also filed praying the court to direct the administrator in Missouri to release the evidences of debt to the executor of the will in Illinois (R. 24). The probate court in Missouri approved the report (R. 17.). Upon appeal the Circuit Court of Lewis County, Missouri, set aside that part of the ruling of the probate court that held that the intangible personal property of the non-resident decedent was not taxable for inheritance tax purposes in Missouri (R. 27.). Upon appeal by the State of Missouri to the Supreme Court of the State of Missouri, that court held that regardless of all other questions that intangible personal property of a non-resident decedent was within the jurisdiction of

Missouri, under the Missouri statute imposing inheritance tax, if any evidences of debt were found in Missouri, and further placing its decision on the ground that the debtors resided in Missouri when the record shows that some of the debtors of decedent were non-residents of Missouri (R.14.). The constitutional question was early raised in the case and has been preserved throughout. This is shown not only by the record (R.15.) but by the decision in the court's concurring opinion (R.57). The rulings below are such as to bring the case within the jurisdictional provisions relied on. The rules of law violated by the decision of the Supreme Court of Missouri, are set out with citations below.

IV.

An attempt by a state statute to tax tangible personal property having an actual situs in another state contravenes the due process of law clause of the Fourteenth Amendment and is invalid.

Frick v. *Pennsylvania,* 268 U. S. 473, l. c. 496.
Union Refrigerator Transit Co. v. *Kentucky,* 199 U. S. 194.

On the subject of the intangible personal property being within the jurisdiction of Missouri, the rules laid down for *property tax* must, by the most recent rulings of this court, be authority for determining what property is within the jurisdiction of Missouri for *transfer tax.*

Rhode Island Hospital Trust Co. v. *Doughton,* 270 U. S. 69, l. c. 80:

"but the principle that the subject to be taxed must be within the jurisdiction of the state

applies as well in the case of transfer tax as in that of a property tax."

The situs of intangible personal property is with the debtor and can have no other situs.

Buck v. *Beach*, 206 U. S. 392.
State Tax on Foreign Held Bonds, 15 Wall. 300, 21 L. Ed. 179.

The maximum of *mobilia sequenter personam* has during the year 1928 been applied by this court to intangible personal property in a transfer tax case, and has been said to be settled within this jurisdiction.

Blodgett, Tax Commissioner of Connecticut v. *Silberman, et al.*, 277 U. S. 1, Nos. 190 and 191, decided April 16, 1928, 48 S. Ct. 410.

Bank deposits, bonds and promissory notes are intangible personal property.

Rhode Island Hospital Trust Co. v. *Doughton*, 270 U. S. 69.
Blodgett, Tax Commissioner of Connecticut v. *Silberman, et al., supra.*

The recent rulings of this court have been calculated to check the tide of exacting by states, revenue under the guise of inheritance tax to the point of confiscating estates. Hence *Frick* v. *Pennsylvania, supra*, prevents two states exacting inheritance tax on the same property as violative of due process, and places the state of the situs of the property as the jurisdiction for the tax, and the situs is where the tangible property is actually situated. It is also held by this court by the cases cited above that bonds, bank de-

posits and promissory notes are intangible personal property and that the situs of the intangible personal property is with the debtor. The question is then presented, is it not, just as much a violation of due process of law to tax intangible personal property in many jurisdictions in addition to the situs as to thus tax tangible property.

The case of *Blodgett* v. *Silberman, supra,* expressly declines to pass upon the authority of a state not of the domicile to tax intangibles, postponing the date of determining that particular question.

Justice Holmes in writing a separate concurring opinion in the case of *Wachovia Bank & Trust Co.* v. *Doughton,* 272 U. S. 567, then dealing with a case passing on transfer tax upon intangible personal property, expressed doubt that the opinion in the case of *Frick* v. *Pennsylvania, supra,* could be reconciled with the earlier holdings on the point.

The holdings of the highest courts of the States of Illinois and Missouri, it is submitted, are in accord, save and except the case at bar, with our contention.

The People v. *Foreman,* 322 Ill. 223.

In re Zook's Estate, 317 Mo. 986.

State ex rel. American Central Ins. Co., v. *Gehner,* Missouri Supreme Court (not yet officially reported), No. 27495, decided July 30, 1928, found in 9 S. W. (2) 621.

State ex rel. American Auto Ins. Co. v. *Gehner,* Missouri Supreme Court (not yet officially reported), No. 27492, decided July 3, 1928, found in 8 S. W. (2) 1057.

Respectfully submitted,

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